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RIPARIAN RIGHTS TO CHICAGO'S LAKE FRONT

By FRANK J. DOWNS, JR.

A recent issue of the Chicago Tribune revealed a contract by the terms of which an attorney will receive between \$550,000 and \$2,000,000 in contingent fees if his twenty-one clients win their claims in the condemnation proceedings on riparian lands brought by the Lincoln park board. The condemnation suits were filed a year ago by the park board to open the way for the extension of the park's outer drive as far north as Evanston.

The proposed extension of the outer drive would necessitate the filling in of a part of Lake Michigan as it is planned to construct the drive some distance east of the present western boundary of Lake Michigan. Property running from Bryn Mawr to Devon avenue, some 2500 feet, with a depth of 150 feet from Sheridan road to the lake would be affected. The property owners contend that when the lake is filled in to provide for the park drive extension they will be entitled to land with a depth of 1000 feet from Sheridan road.

The claims of the property owners are opposed by the park board which in 1904 established a riparian boundary line along the lake shore. The land in dispute has, or would have when filled in, a market value of \$10,000,000. The attorney will receive 75 cents per square foot for all land recovered by the property owners to a distance of 425 feet from the existing shore line. Should the property owners win their fight all the way out to the 1,000 foot line, the attorney will receive \$1 per square foot for the land acquired beyond the 425 foot line.

The suit is of great interest to anyone who has read about it. That part of it which attracts and holds the attention of the reader is the great value of the land involved and the large attorney's fees possible. But the thought which holds the attention of the law student is that such situations have arisen before and are apt to arise frequently in the future. Chicago, rapidly growing, finds itself daily needing more land and more rights.

To fully understand the problem in Chicago it is necessary to touch lightly upon its historical background.

Early Chicagoans, huddled closely about Fort Dearborn, had little regard for the shifting sandbars which constituted the lake front. They ignored, or perhaps were discouraged, from thinking of, the possibilities of beautifying their city by a proper utilization of the land fronting on Lake Michigan. Building upon the lake front presented many hazards due to the severe storms and the changing shore line resultant therefrom. There was no objection therefore, when in 1852, the Illinois Central Railroad Company secured a charter along the borders of the lake through the City of Chicago to a point to be designated by the city as its terminal. The towns surrounding the then City of Chicago were in like manner indifferent to any advantage that might accrue from the lake front other than such as related to transportation. As a result wharves and docks were built upon the lake front and private interests secured title to the lands bordering upon the lake and not so used for commercial purposes.

It was not until almost the time of the World's Fair that the people of Chicago were awakened to the fact that they had made a backyard of what should have been a frontyard and had unconsciously parted with the means of creating one of the most beautiful cities in the world. But at last, mainly through the work of the Chicago plan Commission, the city began to take an interest in its lake front. In 1889 the state legislature passed an act authorizing the board of commissioners for Lincoln Park to extend the Lake Shore drive over and upon the bed of Lake Michigan and to sell and convey to the adjoining shore owners the submerged land which might be reclaimed in extending such driveway.

Shortly after this litigation began to arise between the state, the city and the private persons and corporations as to the ownership of the bed of Lake Michigan. In *People v. Kirk*, 162 Ill. 138 and *Revell v. People*, 177 Ill. 468 it was held that the title and dominion over the lands covered by the Great Lakes belongs to the state in which the lands are located. The State of Illinois holds the title to this submerged lands in trust for its citizens for fishing and navigation purposes.

The power of the state to convey parcels of land held by the state under navigable waters, when such conveyances will not impair the public interest in the lands and waters remaining was recognized in *Illinois Central R. Co. v. Illinois*, 146 U. S. 387.

The land owner bordering upon Lake Michigan has only two rights as against the state. He has the right of access from his property to the lake to the width of his land; and secondly, "where land gradually and imperceptibly encroaches upon the water, the accretion thus made belongs to the shore owner." *Revell v. People*.

But *Revell v. People*, cited above, and *Commissioners of Lincoln Park v. Fahrney* 250 Ill. 256 are authorities for the statement that the reclamation of submerged lands, or artificial accretion, is denied to the owners of shore land. The right to reclaim such land exists solely in the state. Corporations such as the Illinois Central Railway Company which fill in land along the lake front do so, not because of their riparian rights through ownership of bordering land, but, because they have been granted the right by an act of the state legislature. The right of such owners to construct piers in the interests of navigation is likewise limited to construction with the permission of the state. *Cobb v. Commissioners of Lincoln Park*, 202 Ill. 427.

Thus it will be seen that the rights of both the city of Chicago and of private owners are derived from the state.

When, therefore, the city of Chicago in the interest of its World's Fair of 1893 sought to construct boulevards and parks along the waterfront, it had to secure first the sanction of the state Legislation was readily enacted enabling the city or park districts to establish and fix lines of riparian ownership by agreement with land owners confirmed by court action or by condemnation. Agreements were generally made by which the city granted owners the right and title to all submerged land to a certain fixed point, in return for which the property owners gave up their claims to any natural accretion beyond that point.

Jackson Park was constructed from an uninteresting stretch of prairie into one of the largest and most beautiful parks existing within any metropolitan city in America. The success of the

experiment in Jackson Park was an incentive the building Grant Park. To build this park permission of the state was obtained to fill in the waters touching the right of way previously granted the Illinois Central Railroad.

With the coming of the automobile the necessity for a more extensive system of driveways became apparent and one logical location for such a driveway was following the edge of Lake Michigan from the southern extremities of the city to the northern. The so-called "outer drives" being built in Chicago at the present time, are being constructed with this end in view.

When the outer drive was extended out past Jackson Park recently, the Chicago Beach Hotel fought the condemnation proceedings and a compromise was finally effected. The park board in order to proceed with its plans for condemning property must secure the consent in writing of the owners of at least two-thirds of the frontage abutting on the lake in front of which they propose to extend the driveway. Providing they can secure the consent of the owners of such an amount they may then condemn the riparian rights of any individual owners who refuse to come to an agreement.

In the present case on the north side the Lincoln Park Commissioners have proposed a line beyond which the owners would have to give up all claims. But the owners have banded together and refuse to accept the line claiming that it does not give them sufficient consideration for the valuable rights they are asked to surrender.

When one takes into consideration that the general drift of sand, which forms the natural accretion to the property upon the water front, is southeasterly and that therefore these lands have for a long time been enlarged gradually by natural accretion and further extended by lawful piers projected with the consent of the state, it will be seen that they not only have a very great present value, but that the right to further accretions, lawfully made, is a valuable property right.